



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 30, 1996

Mr. Patrick S. Dohoney  
Assistant District Attorney  
Tarrant County  
Justice Center  
401 W. Belknap  
Fort Worth, Texas 76196-0201

OR96-1996

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101682.

Tarrant County Sheriff's Department (the "department") received an open records request for all of the department's records pertaining to a named individual who is currently under the jurisdiction of the State of Georgia criminal justice system. Because the requestor is acting on behalf of an attorney who is representing the criminal defendant, you contend that the department need not respond to the request pursuant to section 552.027 of the Government Code. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. You have identified the information in the department's possession that is responsive to the request and submitted it to this office for review.

Section 552.027 of the Government Code provides:

(a) A governmental body is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility.

(b) Subsection (a) does not prohibit a governmental body from disclosing to an individual described by that subsection information held by a governmental body pertaining to that individual.

(c) In this section, "correctional facility" has the meaning assigned by Section 1.07(a), Penal Code.<sup>1</sup>

Gov't Code § 552.027 (as added by Acts 1995, 74th Leg., ch. 302, § 1)(footnote added).

By enacting section 552.027, the legislature intended to prevent inmates from using information obtained through the Open Records Act "to file bogus income tax returns on correctional officers, harass nurses at their home addresses, and send mail to the homes of Texas Department of Criminal Justice employees." Tex. Sen. Criminal Justice Comm., Bill Analysis, Tex. H.B. 949, 74th Leg., R.S. (1995) (quoting from "Background") (available through the Senate Research Center). After careful consideration and given the stated purpose of section 552.027, we do not believe that the legislature intended to prevent an attorney, who is subject to rules of professional responsibility, from requesting information on behalf of an inmate whom he is representing. Accordingly, we conclude that section 552.027 does not relieve a governmental body of its obligation to accept and comply with an open records request from an individual acting on behalf of an attorney who is representing an inmate. We, therefore, must consider whether the requested information falls within the scope of the exceptions to disclosure that you have raised.

Because section 552.103 is the more inclusive exception that you raise, we will address it first. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have not argued or otherwise demonstrated that the criminal defendant is a party to pending or reasonably anticipated criminal litigation with the State of Texas. We, therefore, conclude that you have not met your burden in demonstrating the applicability of this exception. The department may not withhold any of the requested information pursuant to section 552.103.

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<sup>1</sup>Section 1.07(a)(14) of the Penal Code provides:

"Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

- (A) a municipal or county jail;
- (B) a confinement facility operated by the Texas Department of Criminal Justice;
- (C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and
- (D) a community corrections facility operated by a community supervision and corrections department.

We agree, however, that the department must withhold all criminal history information obtained from the TCIC and NCIC. As this office has previously observed:

The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose, Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F.

Open Records Letter No. 96-0394 (1996). The department, therefore, must withhold any criminal history information obtained from the TCIC and NCIC pursuant to section 552.101 of the Government Code. Because you have raised none of the act's other exceptions to required public disclosure, the department must release to the requestor all of the remaining requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Assistant Attorney General  
Open Records Division

RWP/JDB/ch

Ref: ID# 101682

Enclosures: Submitted documents

cc: Mr. Michael Hummill  
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(w/o enclosures)